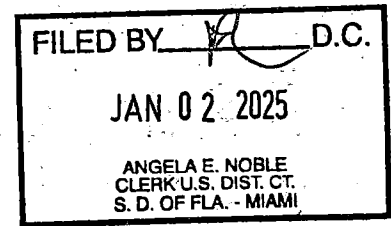


UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF FLORIDA



FRANK E. POLO, SR.
Plaintiff,

v.

BERNSTEIN, et al.

Defendants,

ISSUES ON APPEAL

CASE NO: 23-CV- 21684 /

STATEMENT OF ISSUES ON APPEAL

Comes now the Plaintiffs, FRANK POLO, and pursuant to Rule 28(a)(5) of the Federal Rules of Appellate Procedure, the Appellant submits the following Statement of Issues for Appeal:

1. Whether the District Court abused its discretion, and violated the Plaintiff's right to due process, by acting in an unreasonable, arbitrary, and capricious manner by failing to recuse itself in a case in which it engaged in acts that created the appearance of bias and gave the impression that the court was acting with the sole purpose of benefiting the Court's ex-coworker. Among these acts were the following:

- (1) Personally attacking the form of the pleadings even before any formal motion for a more definite statement or motion to dismiss had been filed, in a case where the judge had a long-standing professional and personal relationship with one of the parties.
- (2) Actively misleading the plaintiff into believing that the ex-coworker was fully protected by absolute immunity.
- (3) Remaining silent about pleading defects that the ex-coworker could have used to challenge the court's jurisdiction.
- (4) Consistently failing to apply the correct principles of law, actions that benefited the ex-coworker.

- (5) Refusing to disclose any potential conflict of interest with the plaintiff's political rivals, and later falsely claiming no such conflict existed when, in fact, conflicts were present.
- (6) Unduly delaying the case by closing it for eight months, preventing the plaintiff from serving pleadings on the defendants.
- (7) Actively preventing the plaintiff from serving the complaint by refusing to approve service by a U.S. Marshal, despite having never conducted a proper merits analysis of the pleadings.
- (8) Dismissing the case with prejudice, claiming it was due to the plaintiff's failure to follow court orders, when, in fact, the plaintiff had complied with every court order.

2. Whether the court failed to apply the correct principle of law by failing to apply the principles stated under **Weiland v. Palm Beach Cty. Sheriff's Office**, 792 F.3d 1326, 1320 (11th Cir. 2015) and adopted by the lower courts in cases like **Downing v. MIDLAND FUNDING, LLC**, No. 2: 15-cv-00737-RDP (N.D. Ala. Jan. 12, 2016), which requires that a pro se pleading be examined to determine whether "[the complaint is] informative enough to permit a court to readily determine if they state a claim upon which relief can be granted."

3. Whether the court failed to apply the correct principle of law by ignoring the long-standing principle in the 11th Circuit that states, "a dismissal with prejudice, whether on motion or sua sponte, is an extreme sanction that may be properly imposed only when: (1) a party engages in a clear pattern of delay or willful contempt (contumacious conduct); and (2) the district court specifically finds that lesser sanctions would not suffice[.]" (**Weiland**, 792 F. 3d 1313 at 1331. Fn. 10) in a case where the record clearly shows no evidence of a clear pattern of delay or willful contempt, and the court did not specifically make a finding as to why a lesser sanction would not suffice.

Respectfully submitted,

By: 

PLAINTIFF

Page 2 of 3

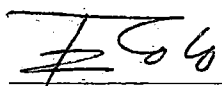
Frank Polo

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 2, 2025, a true and correct copy of the foregoing was filed/mailed with/to the Clerk of the Court who will use the CM/ECF system which will send a notice of electronic filing to all counsel or parties of record on the Service List below.

Roberto J. Diaz
rjd@jpfitzlaw.com
J. Patrick Fitzgerald & Assoc., P.A.
110 Merrick Way, Suite 3-B
Coral Gables, FL 33134
Counsel for St. Thomas University

Jennifer Rebeca Perez Alonso
jalonso@beasleydemos.com
Stephanie Elaine Demos
sdemos@beasleydemos.com
Joseph W. Beasley
jbeasley@beasleydemos.com
Beasley, Demos & Brown, LLC
201 Alhambra Circle
Suite 501
Coral Gables, Florida 33134
Counsels for Defendants Manuel Segarra,
and Segarra & Associates, P.A.

By: 
PLAINTIFF
Frank Polo
1475 SW 8th St. Apt. 411
Miami, FL. 33135
Phone: 305-901-3360
E-Mail: Frank.Polo@msn.com

Kathryn Brucia
kathryn.brucia@myfloridalegal.com
Martha Hurtado
Martha.Hurtado@myfloridalegal.com
Martine Legagneur
Office of the Attorney General
110 SE 6th St Ste 1200
Fort Lauderdale, FL 33301-5031
martine.legagneur@myfloridalegal.com
Counsels for Scott Bernstein, Marcia Del Rey,
Spencer Multack, and Thomas Logue